

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS Nos 1331 & 1332 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA

Versus

ASSOCIATED BUILDERS

Appearance:

Ms.P.J.Davawala for appellant

MR KG SUKHWANI for Respondent No. 1

No one appears on behalf of respondent No.2

(Arbitrator)

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 07/07/2000

COMMON ORAL JUDGEMENT

1. These two Appeals have been filed by Union of India under S.39 of the Arbitration Act, 1940 against the judgment and order of the City Civil Court, Ahmedabad, Court No.9 passed on 18.8.80 whereby two Civil Misc. Applications Nos.480 and 773 of 1979 were decided. The aforesaid common order dt.18.8.80 passed in the above numbered Civil Misc. Applications is under challenge in

these two Appeals and it was mentioned that First Appeal No.1331/80 relates to the order in Civil Misc. Application No.773/79 and First Appeal No.1332/80 relates to the order in Civil Misc. Application No.480/79.

2. Respondent No.1 herein, namely, M/S. Associated Builders had taken a contract from the Union of India for construction of Head Post Office building at Kheda and an Agreement No.44/EEPT/A/76-77 was executed between the parties. The dispute arose between the contractor i.e. respondent No.1 herein and the Union of India out of and in connection with the said Agreement. As per terms of the Agreement, the dispute was referred for decision to the respondent No.2 herein, namely, L.T.Jeyachandran, who was working at the relevant time as Superintending Engineer (Arbitration) in the Ministry of Communication, P & T, New Delhi and who had been appointed as Arbitrator by the Chief Engineer (Civil) vide his letter dated 6.7.78 to act as an arbitrator to decide and make the Award regarding the said dispute falling within the purview of Clause 25 of the Agreement. The sole Arbitrator made and published the Award on 28.6.79. The sole Arbitrator in the award dated 28.6.79 gave his findings as under:-

"ISSUES

FINDINGS

Claims of the Claimant (Respondent No.1 herein)

Claim No.1 Justified to the extent of Rs.28,812=33P

Claim No.2 Partly justified to the extent of
Rs.14,724=00.

Claim No.3 Partly justified to the extent of
Rs.1,148=02 P.

Claims No.4
to 10 Not justified.

Counter - claims of the Respondent (Appellant Union of
India)

Counter Claims
No.1 to 3 Not justified.

Counter claim
No.4. Fully justified to the extent of
Rs.88=00.

Counter claim

No.5 Not justified.

Counter claim

No.6 Fully justified to the extent of
Rs.70=00.

Counter claims

No.7 & 8. Not justified."

The Arbitrator accordingly made the Award in favour of respondent No.1 herein and against the present appellant for a sum of Rs.44,526=35 Ps. The respondent No.1 herein filed an Application i.e. Civil Misc. Application No.439/79 before the Court for the purpose of filing the original award in the Court. This Civil Misc. Application had been moved under S.14(2) of the Arbitration Act. Later on the Arbitrator himself had moved an Application before the Court under S.14(2) and, therefore, the respondent No.1 herein did not press the aforesaid Civil Misc. Application No.439/79 and the same was disposed of accordingly.

3. In fact the Arbitrator on his own accord had filed an Application stating therein that he had given a Notice intimating the parties with regard to the publication of the Award under S.14 of the Arbitration Act on 28.6.79 and that soon after making and publishing the Award, an error of fact had come to his notice and, therefore, he requested both the parties for consent in correcting the Award under his letter dt.2.7.79. Counsel for the claimant i.e. respondent No.1 herein in his letter dt.13.7.79 stated to the Arbitrator that having passed the Award he has become functus officio on publishing the award and that he was not prepared to give consent for the correction of the Award. The Arbitrator, therefore, stated in his Application before the Court that in view of the request, which had been made by the claimant to file the documents, he was filing the same under S.14(2) of the Act and it was further submitted that certain incidental omissions have occurred in the calculation of the Award in Claim No.1 and, therefore, he requested the Court to correct the item of the Award against claim No.1 from Rs.28,812=33 Ps. to Rs.10,202=23 Ps. It was also stated in the Application that the omissions leading to the above error were beyond dispute and fall under S.15(c) of the Arbitration Act and it was further stated that such omissions do not involve any error of judgment, which was now sought to be corrected. The Arbitrator stated that if the Award is made the rule of the Court without making above corrections, it would result in a gross miscarriage of justice and the claimant

would stand unduly benefited by the said amount. In view of this, in the Application, which was numbered as Civil Misc. Application No.480/79 before the Court, notice was issued to the parties for filing the award. Union of India on receipt of the notice in the Civil Misc. Applications Nos.439 and 480 of 1980 filed Civil Misc. Application No.773/79 supporting the case of the Arbitrator. Since Civil Misc. Application No.439/79 had been disposed of as not pressed, the Court was left with two Applications i.e. Civil Misc. Application No.480/80 as had been moved by the Arbitrator and Civil Misc. Application No.773/79 as had been moved by the Union of India supporting the Application of the Arbitrator. The Court has dismissed Civil Misc. Application No.773/79, which had been filed by the Union of India and had made the Award filed by the Arbitrator in Civil Misc. Application No.480/79 as the Rule of the Court. Therefore, the Union of India has filed these two Appeals challenging the rejection of Civil Misc. Application No.773/79 and the Court's order making the Award be the Rule of the Court in the Civil Misc. Application No.480/79. Whereas both these Appeals are directed against the common order and they involve common questions based on the same facts I propose to decide these two First Appeals by this common judgment and order as under:-

4. It appears from the contents of the copy of the Civil Misc. Application No.773/79, which was filed by the Union of India before the Court, that there is no dispute so far as the Award passed by the Arbitrator with regard to Claims Nos.2, 3 and 4 to 10 are concerned, and the learned counsel appearing for Union of India has also submitted that there is no dispute about the Claims Nos.2,3 and 4 to 10 as also the counter claims. The only dispute between the parties is with regard to the amount awarded against claim No.1. The Arbitrator has awarded a sum of Rs.28,812.33 Ps. against claim No.1, whereas it should have been for a sum of Rs.10,202-23 Ps. only. Thus, the correctness of this amount is sought to be contested on the following basis:-

- (i) The award was made for a sum of Rs.28.812=33 Ps.
and in doing so a sum of Rs.0.32 Ps. was omitted
and the correct figure should have been
Rs.28,812=65 Ps.
- (ii) There was deduction item in the final bill for
non execution of rendering work on R.C.C. work
amounting to Rs.9574=46 Ps. The net value of the
work as per the final bill was worked out after

deducting the said amount. Thus, this amount of Rs.9574.46 Ps., which had already been deducted, was again deducted by the Arbitrator. Hence the award amount was required to be increased by Rs.9574=46 Ps.

(iii) Thus, the correct figure comes out to be Rs.38,387=11 Ps. (Rs.28,812=33 Ps. + Rs.0=32 Ps. + Rs.9,574=46 Ps.)

(iv) Against the cost of the Departmental material supplied to the claimant, the amounts as under were to be deducted:-

(a) Cost of Cement Rs. 5393=08 Ps.

(b) Cost of mild steel Rs. 294=58 Ps.

(c) Cost of Tor steel Rs.19578=24 Ps.

Total Rs.25265=90 Ps.

(v) Sum of Rs.2919=00 Ps. was to be further deducted against the credit of this amount which had already been given in favour of the claimant i.e. the amount of security while deciding the Claim No.2.

(vi) Thus the total amount, which was to be deducted, was Rs.25265=90 Ps. + Rs.2919=00 Ps. = Rs.28184=90 Ps.

5. As per the above calculation the Claim No.1 should have been accepted at Rs.38387.11 Ps. minus Rs. 28184-90 Ps. = Rs.10,202.21 only. It was, therefore, submitted that against Claim No.1 the amount awarded should be corrected to Rs.10,202-21 Ps instead of Rs.28,184-33 Ps.

6. These Appeals have been opposed by the claimant respondent No.1 on the ground that whereas the Arbitrator himself had passed and published the Award, he had become functus officio and it was not a case of inadvertent omission or an error in calculation and, therefore, the Arbitrator could not have moved the Court for the correction, as aforesaid, merely because the Executive Engineer of the concerned Department had pointed out that the amount awarded against Claim No.1 had not been correctly awarded. Mr. Sukhwani has submitted that it is not a case of such an error and, therefore, the City Civil Court has rightly passed the order rejecting the Civil Misc. Application No.773/79 and making the Award the Rule of the Court in Civil Misc. Application No.480/79 and no interference is warranted.

7. Having heard learned counsel for both the sides and having gone through the Award and the order, as has been passed by the City Civil Court, which is impugned in these Appeals and having gone through the original records, as are available, this Court finds that basically any mistake in calculation may be corrected at any stage. If such a mistake can not be corrected at the instance of the Arbitrator, it can be corrected even otherwise by the Court while considering the question of making the award a Rule of the Court or an application that it should not be made the Rule of the Court. Faced with this situation, Mr. Sukhwani appearing for the Claimant was himself very co-operative in assisting the Court in finding out as to what had actually gone wrong with the calculation. With the aid of the learned counsel for both the sides, I find from the record that the factual position is as under:-

(a) Final Bill at page 452 was for Rs.1,90,264-76 Ps.

Rebate at the rate of 9.5%

to be given by the claimant-- Rs. 18,075-16 Ps.

Rs.1,72,189-60 Ps.

Already paid previously

to the claimant.

--- Rs.1,24,072-68 Ps.

Rs. 48,116-92Ps.+

Extra Items

+ Rs. 9,574-96 Ps.

(As per Union of India
itself).

Final Gross Bill

Rs. 57,691-88 Ps.

Recovery suggested

on 7.7.79 (Page 455)

Rs. 28,960-90 Ps.

Rs. 28,730-98 Ps.

8. Thus it is clear that the Arbitrator had passed the Award for a sum of Rs.28,812-33 Ps. and the actual amount, which should have been awarded against Claim No.1, should have been Rs.28,730-98 Ps. I find that there is a difference of Rs.81-35 Ps. Despite all the efforts and exercise taken with the aid of the learned counsel, it has not been possible to find out as to why the mistake crept in even for a little sum of Rs.81.35 Ps. In any view of the matter, as per the record of the Appeals, the Claimant is entitled to Rs.28,730-98 Ps. against Claim No.1 and this position being established by

the record, I find that the order, as has been passed by the Court, which is impugned in these two Appeals, deserves to be modified only to that extent. The Award passed by the Arbitrator becomes the Rule of the Court only to the extent as under:-

Claim No.1 -Rs.28,730=98 Ps. Instead of Rs.28,812=33 Ps.

Claim No.2 -Rs.14,724=00 Ps.

Claim No.3 -Rs. 1,148=02 Ps.

Total -Rs.44,603=00

On correct calculation it is found that the correction as was sought by Arbitrator and the application moved by the appellant that against Claim No.1 only a sum of Rs.10,202-23 or Rs.10,202=21 should have been awarded is found to be factually incorrect and contrary to the record.

9. Accordingly the Award becomes the Rule of the Court for a sum of Rs.44,603/- --- Rs.158 (counter claims) = Rs.44,445/-. The sum of Rs.158/- has been deducted because the Arbitrator had accepted the counter claim No.4 to be justified to the extent of Rs.88/- and counter claim No.6 to be justified to the extent of RS.70/- in favour of Union of India and, therefore, the Award becomes the Rule of the Court for the said amount of Rs.44,445/- only. The impugned order dated 18.8.1980 deciding the two Civil Misc. Applications Nos. 480/79 and 773/79 is therefore found to be wrong to this limited extent only. Both these Appeals are, therefore, allowed to the aforesaid limited extent i.e. modifying the figure to Rs.44,445/- instead of Rs.44,526-35 Ps. In the facts and circumstances, no order as to costs.

10. Learned counsel for the respondent No.1 has pointed out that an order was passed in Civil Application No.238/81 by this Court directing the appellant to deposit a sum of Rs.25,916-25 Ps. and the said amount had been deposited in the trial court and, therefore, it is clarified that if the award - Rule of the Court is to be executed the appellant have to now pay a sum of Rs.44,445/- Minus Rs.25,916-25 Ps. = Rs.18,528-75 Ps. only in accordance with law to the respondent No.1 on the basis of the award as has been made the Rule of Court by this order.

(M.R.Callan,J)